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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMES MICHAEL EIDSON,

Defendant and Appellant.

E052160

(Super.Ct.No. FMB900222)

OPINION

APPEAL from the Superior Court of San Bernardino County. Rodney A. Cortez, Judge. Affirmed.

Jean Matulis, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Peter Quon, Jr., Kyle Niki Shaffer, and Christopher P. Beesley, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant James Michael Eidson pled guilty to a felony count of possessing methamphetamine (Health & Saf. Code, § 11377, subd. (a)), along with two drug-related misdemeanor counts, admitted three prior convictions for which he had served prison sentences, and executed a “Drug Court Application and Agreement” (Agreement), in return for three years formal probation with drug treatment terms and conditions. The Agreement included the express waiver of certain rights, namely, defendant’s right to all conduct credits pursuant to Penal Code section 4019, his right to challenge any drug test, the requirement of a formal petition to revoke probation, and his right to a *Vickers*<sup>1</sup> hearing. A year later, defendant’s probation was revoked after he failed to appear at a regular drug court review and manipulated a drug test. He was sentenced to state prison for an aggregate term of six years and appealed.

On appeal, defendant challenges the propriety of the trial court’s findings in the absence of a formal petition for revocation of probation, a *Vickers* hearing, and denial of presentence credits. We affirm.

## BACKGROUND<sup>2</sup>

On May 11, 2009, defendant was charged by way of complaint with one felony count of possessing methamphetamine (Health & Saf. Code, § 11377, subd. (a), count 1),

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<sup>1</sup> Referring to *People v. Vickers* (1972) 8 Cal.3d 451, 459-460.

<sup>2</sup> Because the defendant pled guilty before the preliminary hearing, and because the probation report was not included in the record on appeal, no facts relating to the underlying crimes can be included.

and two misdemeanor counts: being under the influence of methamphetamine (Health & Saf. Code, § 11550, subd. (a), count 2), and possessing a smoking device. (Health & Saf. Code, § 11364, subd. (a), count 3.) It was further alleged that defendant had suffered three prior felony convictions for which he had served a prison sentence (prison priors). (Pen. Code, § 667.5, subd. (b).) The preliminary hearing was delayed to allow defendant to apply for the drug court program.

On June 1, 2009, defendant executed an Agreement seeking acceptance in the drug court program. Among other provisions in the Agreement, defendant waived: (a) his right to all presentence conduct credits pursuant to Penal Code section 4019, (b) his right to challenge any drug test, (c) the requirement that the probation officer file a formal petition to revoke probation, and (d) his right to a *Vickers* hearing.

On June 8, 2009, defendant executed a change of plea form and entered a guilty plea to all three substantive counts, as well as all three prison priors. Defendant failed to appear at his originally scheduled sentencing hearing, resulting in the issuance of a bench warrant. On December 1, 2009, defendant was granted probation for 36 months on various terms and conditions, including requirements that he report to his probation officer once every two weeks, and participate in a plan of rehabilitation.

Between December 2009 and February 2010, the court conducted fortnightly drug court review hearings at which defendant was found to be in compliance. On February 23, 2010, the court granted an oral motion to release defendant back to drug court,

without any additional explanation. Thereafter, between March 9, 2010, and July 27, 2010, defendant was found to be in compliance at the drug court review hearings.

On August 5, 2010, at a drug treatment review hearing, the court found that defendant was not in compliance and revoked probation for the expressed purpose of retaining jurisdiction and issued a bench warrant for defendant's arrest. On September 14, 2010, the court held a probation revocation hearing at which defense counsel acknowledged that defendant had manipulated his drug test and was terminated from the drug court program. Defendant was sentenced to the upper term of three years for count 1, with concurrent jail sentences for counts 2 and 3. The court also imposed consecutive one-year terms for each of the prison priors, for an aggregate sentence of six years in state prison. Defendant received 201 days credit for presentence time actually served, and 40 days of conduct credit pursuant to Penal Code section 4019, in addition to statutory restitution fines.

On October 22, 2010, defendant filed a notice of appeal which included the statement, "I was going to the drug court program and only had one dirty test and got sent to prison for 6 years after I attempted to minipulate [*sic*] a test. . . ."

## DISCUSSION

On appeal, defendant originally argued that: (1) the failure to file a written notice of the probation violation and lack of a *Vickers* hearing denied him due process; (2) the court lacked authority to revoke probation absent an allegation of a new offense or prior violations of probation; and (3) defendant was entitled to additional conduct credits.

Respondent argued that defendant waived his rights to a formal probation violation hearing and conduct credits when he applied for acceptance in the drug court program. Defendant then filed a supplemental opening brief in which he argued that the waivers contained in the application for the drug court program were unconscionable, and, alternatively, that defendant's trial counsel was ineffective for failing to challenge the terms of the agreement. We disagree with all of defendant's contentions.

The Due Process Clause of the Fourteenth Amendment imposes procedural and substantive limits on the revocation of the conditional liberty created by probation. (*Black v. Romano* (1985) 471 U.S. 606, 610 [105 S.Ct. 2254, 85 L.Ed.2d 636]; see also *People v. Arreola* (1994) 7 Cal.4th 1144, 1152.) The minimum requirements of due process applicable in parole revocation hearings are also compelled in probation revocation proceedings, compelling the application of holding of *Morrissey v. Brewer* (1972) 408 U.S. 471 [92 S.Ct. 2593, 33 L.Ed.2d 484] to probation revocation proceedings. (*People v. Vickers, supra*, 8 Cal.3d at p. 458.) These safeguards include: (a) written notice of the claimed violations; (b) disclosure of the evidence against the defendant; (c) opportunity to be heard in person and present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses; (e) a neutral and detached hearing body; and (f) written findings of the reasons for revocation. (*People v. Vickers*, at pp. 457-458; see also *In re Moss* (1985) 175 Cal.App.3d 913, 929.)

A probationer may waive his *Vickers* rights. (*In re Moss, supra*, 175 Cal.App.3d at p. 930, citing *In re La Croix* (1974) 12 Cal.3d 146, 153.) The right may be expressly

waived or it may be deemed to have been waived when the defendant fails to assert the right in a timely manner. (*La Croix*, at p. 153.) A defendant may also waive custody credits as a condition of admittance to a drug treatment program, so long as the waiver is knowing and intelligent. (*People v. Black* (2009) 176 Cal.App.4th 145, 154.)

Here, defendant executed an Agreement similar to a plea bargain by which he waived his rights to a *Vickers* hearing and to presentence conduct credits in return for drug court probation. The Agreement was acknowledged by defendant and all relevant terms and waivers were initialed by the defendant. In return for the relinquishment of the right to presentence conduct custody credits and the procedural rights relating to probation revocation proceedings, defendant garnered the opportunity to rehabilitate himself, and dismissal of all charges if successful. Defendant does not assert that he did not understand its terms. His current complaint that the agreement was an “adhesion contract” is contradicted by statements on both agreements that he was freely and voluntarily entered each.

The Drug Court Application is a negotiated agreement between the prosecution and the defendant. (See *People v. Segura* (2008) 44 Cal.4th 921, 930-931 [re contract principles applicable to plea agreements].) Acceptance into the Drug Court program was an integral part of the plea agreement, having been specifically included as a term on the change of plea form. The Agreement constitutes a valid waiver of the procedural rights relating to probation revocation proceedings as well as of his right to presentence conduct credits. Because defendant was ineligible for Proposition 36 probation (Pen. Code,

§ 1210, et seq.), the plea agreement provided a valuable benefit to defendant which justified the procedural waivers.

More importantly, because Drug Court was an integral part of the plea bargain, any challenge to the validity of the drug court agreement is tantamount to a challenge to the validity of the plea, requiring a certificate of probable cause. (See *People v. Pannizzon* (1996) 13 Cal.4th 68, 79 [challenge to stipulated sentence constitutes a challenge to the guilty plea itself].) Without a certificate of probable cause, we cannot review the validity of the agreement by which defendant waived his *Vickers* rights and his conduct credit rights.

The only remaining matter that we can determine by this appeal is whether the defendant's probation was properly revoked, although defendant does not assert that there is insufficient evidence to support the finding of violation or that the trial court abused its discretion. Trial counsel's acknowledgment that defendant manipulated his drug test provides ample evidence to support the revocation. In any event, the defendant does not challenge the validity of that admission. The trial court properly found defendant to have violated probation and it was within its discretion to revoke probation. (Pen. Code, § 1203.2, subds. (b), (c).)

By virtue of the Agreement, defendant validly waived his rights under *Vickers* and waived his right to presentence conduct credits. There was no error, constitutional or otherwise.

DISPOSITION

The judgment is affirmed.

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RAMIREZ  
P.J.

We concur:

RICHLI  
J.

MILLER  
J.